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LETTER DATED 29 APRIL 1991 FROM THE SECRETARY-GENERAL
ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

It will be recalled that, in his letter of 27 February 1991 addressed to me (S/22333, annex), the Permanent Representative of Kuwait had requested that a United Nations mission be sent to his country, inter alia, to assess the losses of life incurred during the Iraqi occupation of Kuwait and to examine the occupation forces' practices against the civilian population of that country.

Consideration of these questions was included in the terms of reference of the high-level United Nations mission, led by Mr. Abdulrahim A. Farah, which visited Kuwait from 16 March to 4 April 1991. However, the Government of Kuwait requested the mission to defer the preparation of a full report on these aspects until a later date and to issue an interim report at this stage. The present interim report is, accordingly, submitted herewith for the attention of members of the Security Council.

(Signed) Javier PEREZ de CUELLAR

READEX FICHE

Annex

INTERIM REPORT TO THE SECRETARY-GENERAL BY THE UNITED NATIONS MISSION LED BY MR. ABDULRAHIM A. FARAH, FORMER UNDER-SECRETARY-GENERAL, ASSESSING THE LOSSES OF LIFE INCURRED DURING THE IRAQI OCCUPATION OF KUWAIT, AS WELL AS IRAQI PRACTICES AGAINST THE CIVILIAN POPULATION IN KUWAIT

Introduction

1. On 27 February 1991 the Permanent Representative of Kuwait to the United Nations addressed a letter to the Secretary-General requesting the dispatch of a United Nations mission to Kuwait which would, inter alia, assess the losses of life and examine the practices of the Iraqi forces during the occupation of Kuwait. On 6 March 1991, the Secretary-General appointed a mission under the leadership of Mr. Abdulrahim Abby Farah, former Under-Secretary-General, with the following terms of reference:

(a) To receive pertinent information from the Kuwaiti authorities, as well as non-governmental organizations (NGOs), for an assessment of the losses of life incurred during the Iraqi occupation of Kuwait;

(b) To receive pertinent information from the Kuwaiti authorities, as well as NGOs, on Iraqi practices against the civilian population in Kuwait;

(c) To assess the scope and nature of the damage that was inflicted on Kuwait's infrastructure during the period.

2. A separate report on part (c) of these terms of reference is being issued as document S/22535.

3. On the human rights aspects of the mission's mandate, Mr. Farah was assisted by Mr. Victor Sukhodrev, Special Assistant to the Secretary-General, and Mr. John Pace, Chief, Legislation and Prevention of Discrimination Branch in the Centre for Human Rights of the United Nations Secretariat.

Interim report

4. The mission arrived in Kuwait on 16 March 1991, less than three weeks after the withdrawal of Iraqi forces from the country. It remained in Kuwait until 4 April 1991. Soon after the mission's arrival, Mr. Farah was received by the Crown Prince and Prime Minister of Kuwait. The mission also held a series of meetings with the Minister of State for Foreign Affairs, the Minister of State for Cabinet Affairs and the Minister of Justice and Legal Affairs. These meetings provided an opportunity to discuss matters relating to the human rights situation in Kuwait during the occupation, as well as the requirements of the mission to carry out its mandate.

5. At the time of the mission's arrival in Kuwait, the Government had barely begun to re-establish its administration and to restore basic community services. This situation created considerable difficulties for the mission in making contact with the concerned sections of the community and in publicizing its mandate and programme of work. The national press, radio and television had only begun to resume their activities and their reach was limited. Moreover, the mission discovered on its arrival that inadequate publicity had been disseminated locally concerning its schedule, terms of reference and methods of work. Accordingly, after consultations with the Ministry of Information, arrangements were made for the mission's spokesman to be interviewed over radio and television to explain its mandate.

6. Many persons in Kuwait who may have had information relevant to this mandate were understandably preoccupied with putting their own lives in order and were not able to meet the mission. However, it was the considerable displacement of Kuwait's population outside the country that posed the principal difficulty in obtaining information. Over two thirds of the civilian population had been forced into exile; of an original 650,000 Kuwaitis, only 200,000 were estimated to have remained during the occupation period. Over 1 million foreign nationals, representing more than two thirds of their original number, had been compelled to leave the country. Additionally, there were large numbers of persons who could not be accounted for. The mission was informed, for instance, that a complete list of missing persons said to have been forcibly abducted and taken to Iraq was still being compiled and would probably be completed only when members of their families now abroad returned to their homes.

7. Although the mission did succeed in collecting information pertinent to its mandate from various individuals and groups in Kuwait, it was clear that a report of the type called for in its terms of reference would not be definitive or comprehensive if all who wished to do so were not given the opportunity of presenting their testimony. The Government of Kuwait also felt that the issuance of a definitive report should be delayed by three or four months, by which time it was envisaged that the majority of Kuwaitis abroad would have returned and Iraq would have released those believed to be in its custody.

8. For the reasons stated above, it was agreed that the present report of the mission should be of an interim nature. The mission would resume consideration of matters relating to human rights on a date to be agreed upon by the Government of Kuwait and the Secretary-General.

9. The Government of Kuwait conveyed to the mission its need for the services of a United Nations expert to advise on the modalities and machinery necessary for the collection, coordination and presentation of information pertinent to the mission's terms of reference. Accordingly, the Secretary-General has made arrangements with the Centre for Human Rights of the United Nations Secretariat to provide the services of an expert to undertake this task.

10. The work of the mission was facilitated by the Government's decision to assign a prominent member of the community, Abdullah Al-Dikheel, former Minister of Public Works, to serve as the government counterpart to the leader of the United Nations mission during its stay in Kuwait. The Government also designated Abd al-Aziz al-Dikheel, Under Secretary of the Ministry of Justice and Legal Affairs, who is also the Chairman of the Kuwaiti Human Rights Committee, to act as the principal focal point for contacts between the mission and the Government in the coming months.

Method of work

11. Two types of information relating to human rights were included in the mission's terms of reference. The first related to the loss of life incurred during the occupation; the second dealt with the question of Iraqi practices against the civilian population during that period.

12. Information furnished under the first category was considered within the framework of existing international human rights norms, including the Universal Declaration of Human Rights a/ and the International Covenant on Civil and Political Rights. b/ The term "loss of life" was also interpreted to cover cases of enforced or involuntary disappearance if such a distinction was made in the information submitted to the mission.

13. Information received under the second category was viewed within the context of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, c/ the Fourth Geneva Convention.

14. The mission categorized information it received within eight broad types of measures or practices that are prohibited by the Fourth Geneva Convention in so far as they relate to the status and treatment of protected persons. These included:

(a) Arbitrary arrest and/or detention;

(b) Ill-treatment whilst in detention;

(c) Ill-treatment of civilians;

(d) Deportation;

(e) Non-observance of the right to life;

(f) Expropriation of property;

(g) Destruction of property;

(h) Reprisals/collective punishment.

15. Through a press statement released on 18 March 1991 (see appendix), the mission advised interested parties that the information submitted should conform to the "best-evidence" principle. This required that it should come from sources closest to the alleged occurrences. Basic data, including the indication of place and time and other corroborative elements, would complement the information thus presented.

16. As the human rights team formed an integral part of the overall United Nations mission, its members were able to derive considerable benefit from the information exchanged on the various aspects of the mission's mandate. This helped to identify several important sources of information pertinent to the human rights aspect, particularly those relating to the expropriation, looting or destruction of private property. Such information is incorporated in the damage assessment report, which has been issued separately.

17. The mission conducted 87 interviews, including 75 with individuals. It had extensive contacts with the Kuwaiti Red Crescent Society, the Kuwaiti Human Rights Committee and the Kuwaiti Association for the Defence of War Victims. It also held meetings with professional associations and groups as well as with representatives of neighbourhood cooperatives, which are a distinctive feature of Kuwaiti society. The mission also interviewed members of the diplomatic community in Kuwait and representatives of expatriate national groups.

18. Although the mission was to address itself primarily to non-governmental groups, many individuals were interviewed, their experience being directly relevant to the nature of the mandate and, indeed, essential given the limited number of NGOs operating at the time of the mission's visit. It also took note of reports prepared by some externally based NGOs; these were useful as indicators of prima facie relevant sectors of inquiry. Amnesty International submitted a detailed report in New York on the eve of the mission's departure for Kuwait. During its stay in Kuwait, other international NGOs contacted the mission, including representatives of Physicians for Human Rights and Middle East Watch.

Assessment of the general situation

19. The mission received allegations of a wide range of human rights abuses that were said to have occurred during the period of occupation. The interviews conducted by the mission provided many instances where one or more of the practices prohibited by the Fourth Geneva Convention had allegedly taken place. These included 40 cases of ill-treatment whilst in detention, 33 of arbitrary arrest and/or detention, 15 of loss of life, 14 of expropriation of property, 11 of ill-treatment of civilians, 8 of destruction of property, 3 of deportation and 3 of reprisals or collective punishment.

20. The information received by the mission suggested that, in the early stages of the occupation, the Iraqi authorities had resorted to stringent measures with a view to suppressing any signs of resistance. This was

followed at a later stage by the intensive searching of houses for any foreigners and members of the resistance movement who might be concealed there and punishment for those found to be harbouring them. Widespread arrests and the use of torture were reported to have occurred in an attempt to extract information on the resistance network. It was alleged that terror tactics against the civilian population were intensified towards the end of the occupation period. These took the form of arbitrary arrest and, in several cases, killing of people in front of their homes or families as well as the dumping of bodies in public places. In the last week of the occupation, from about 21 February 1991, several thousand civilians were said to have been indiscriminately picked up from outside their homes, mosques and other public places and taken to Iraq.

21. In the absence of documentary evidence, it was not possible for the mission to form a complete picture of the legal regime in force during the occupation. The mission did receive oral evidence citing specific legislation that was said to have been promulgated and enforced in Kuwait. For instance, on or about 21 August 1990, looting was said to have been made a capital offence and, on 25 August 1990, the death penalty was allegedly instituted for harbouring civilian expatriates from Western States.

22. Statements made to the mission contained several references to laws concerning changes in identification papers, currency, ownership documents and other similar evidence of the "Iraqization" of Kuwait. The information received by the mission shows negligible recourse by the Iraqi authorities to judicial procedures, particularly in regard to alleged criminal matters.

23. According to statements made by several persons who lived in Kuwait throughout the occupation, the entire period was characterized by a consistent pattern of resistance, both passive and active. Active resistance included acts of violence, sabotage and harassment of occupation forces. Passive resistance was aimed at frustrating the Iraqi policy of annexation of Kuwait at virtually every level, including the political, commercial, cultural and educational levels.

24. An important feature of this passive resistance was the ability of the civilian population to organize itself through the adaptation of the neighbourhood cooperatives system. In normal times, this system provided essential commodities at subsidized prices to the civilian population. The system continued during the occupation period, thereby ensuring the availability of a regular supply of food and money, which made it possible for the civilian population, Kuwaiti and non-Kuwaiti, to survive independently of the occupation authorities. The mission was also told of successful efforts by some expatriate groups to form their own self-help cooperatives and sources of supply.

Losses of life incurred during the occupation

25. The mission was not provided with any official records or data relating to the loss of life in Kuwait incurred during the occupation. The Government explained that the departments that normally maintained such statistics had ceased to function during the occupation and that any information would have to be obtained eventually through public inquiry. In the circumstances, no precise figure can be given for the losses of life incurred during the occupation until it is possible firmly to establish the whereabouts and condition of persons held by Iraq in its territory as well as those displaced elsewhere. The mission was informed by the Kuwaiti Red Crescent Society that in the first weeks of occupation it had maintained records of deaths, but these were seized after its leadership was detained by the occupation forces on 17 September 1990.

26. The mission received testimony from senior hospital staff about several cases, which they professed to have seen, where persons bore all the signs of having died violent deaths. These submissions were, in some cases, accompanied by photographs. The mission was informed that the neighbourhood cooperatives, which were eminently placed to obtain information in this regard, were conducting their own inquiries in their respective residential areas. This is an ongoing task and the mission was informed that the results would not be available until a later date.

27. Interviews conducted during the visit tended to suggest that the incidence of violent death was relatively high throughout the occupation period. For the most part, responsibility was attributed to the activities of the two Iraqi intelligence bodies known as Istahbarat and Muhabarat. A number of summary executions were also said to have been carried out by army elements. Although the mission put the question regularly, it received no evidence of any form of trial or other judicial or quasi-judicial process.

Iraqi practices during the occupation

28. The Fourth Geneva Convention establishes acceptable international standards of behaviour towards the treatment of the civilian population in times of war and conflict. Considerable information received by the mission related specifically to articles 27 and 31 to 34.

29. The Kuwaiti Human Rights Committee, established by the Council of Ministers to centralize the registration of missing persons, informed the mission that, as of 20 March 1991, it had recorded applications in respect of over 11,700 persons reported as missing. The Kuwaiti Red Crescent Society informed the mission that a list of 10,500 names had been furnished to the International Committee of the Red Cross (ICRC) at Riyadh for the purpose of negotiations with Iraqi authorities in the repatriation process. During the mission's stay in Kuwait, it was reported that a large number of prisoners-of-war (POWs) and civilian detainees had been repatriated from Iraq. However, it was believed that some 5,000 remained unaccounted for.

30. Allegations were made of several cases of arbitrary arrest and detention, usually followed by deportation or "transfer" to Iraq. These referred to persons of various ages and occupations. The mission was informed of the case of a family with young children that was said to have been detained in reprisal for the alleged involvement of one of its members in resistance activities. The family interviewed by the mission said it had been held at Basra, in Iraq, together with six other families.

31. The mission received several indications of resort to the use of cruel and inhuman treatment and torture. This included information on torture having been practised at a number of specific locations, including police stations, a juvenile detention centre, a sports club and public buildings. Four of these places were visited and at two of them the visit was conducted in the presence of an alleged victim who provided the mission with additional details.

32. The mission was shown tools, instruments and electronic devices said to have been used for torture. Some persons interviewed by the mission still bore evident signs of having been subjected to such an ordeal. A number of medical personnel told the mission that they had attended to patients who had been tortured and who had subsequently died.

33. Among the places where torture was said to have been practised was the Embassy of Iraq in Kuwait. The Dean of the Diplomatic Corps told the mission that, on 16 August 1990, he had witnessed five prisoners being dragged out of the premises, propped up by guards, blindfolded and their bodies bloodied.

34. The mission was informed of several alleged instances of rape, both by persons who said that they were victims and others who were eye-witnesses. Doctors and medical personnel corroborated such information. The mission was told that social and religious taboos often prevented women from reporting instances of rape. However, in many cases the rape had led to pregnancies, making it no longer possible to conceal the fact. The mission was also told of cases of suicide as a result of rape trauma.

35. Information about incidents of reprisals and of collective punishment was also brought to the attention of the mission. The mission visited an area where some 18 houses, on the periphery of a school compound, had been partially destroyed. This was stated to have been an act of reprisal against the local community after the bodies of two Iraqi soldiers had been discovered in the school compound.

Expatriate nationals

36. At the time of the occupation, expatriates in Kuwait could broadly be divided into two categories, namely, the Arab-Asian community and nationals of countries members of the Organisation for Economic Cooperation and Development (OECD). The mission received information from the former category, many of whose members had remained in Kuwait throughout the occupation and had been

exposed to Iraqi policies and practices. No contact was possible with members of the latter category, since the overwhelming majority had left Kuwait during the occupation. The United Kingdom Ambassador in Kuwait did, however, provide the mission with the text of a statement recorded by members of his community on their experiences as well as a statement which he himself had delivered to the United Nations Commission on Human Rights at its forty-seventh session held at Geneva from 28 January to 8 March 1991.

37. Repeated reference was made to the mission about the hardships and experiences of the large number of foreign workers who were forced to flee the country under conditions of duress during the occupation as well as those who remained during the entire occupation period. For example, only 5,000 Pakistani nationals remained out of a community of 92,000. The conditions under which the foreign workers departed is reflected in the situation that occurred at the Embassy of the Philippines, where at one point 22,000 persons sought the safety and assistance of their diplomatic mission for a number of weeks until their departure could be arranged.

38. The mission was informed that, during this period of flight, foreign nationals were denied food supplies, even though stocks existed in sufficient quantities at the time. Departure conditions were rendered particularly difficult as people were not allowed to leave Kuwait except by routes prescribed by the occupation authorities. Those of limited or no means were obliged to travel to their homes in south Asia overland, through Iraq or Turkey. This intensely arduous and hazardous journey was said to have resulted in considerable suffering and even loss of life.

39. With regard to those expatriates who remained, problems were reported to the mission concerning their status vis-à-vis the occupation authorities, particularly in matters concerning identity papers, currency exchange and other measures taken by the Iraqi authorities in the context of the purported annexation of Kuwait. Several cases of arbitrary detention, ill-treatment, rape and looting of property were reported to have occurred and these were described in the course of the interviews conducted by the mission.

Diplomatic community

40. On 9 August 1990, the diplomatic community in Kuwait was informed of the "acceptance by Iraq of Kuwait's request for unity" with it and that all diplomatic and consular missions in Kuwait should close by 24 August. The very same day, the United Nations Security Council, in its resolution 662 (1990) decided that "annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void". In its subsequent resolution 664 (1990), the Security Council demanded that "the Government of Iraq rescind its orders for the closure of diplomatic and consular missions in Kuwait and the withdrawal of the immunity of their personnel". However, as the Dean of the Diplomatic Corps told the mission, the message from Iraq "was clear: come 24 August, we would no longer be treated as diplomats but would be treated as any civilians whose only protection would be the Fourth Geneva Convention".

41. He continued:

> "While the conduct of Iraqi authorities violated norms and custom of diplomatic privilege and immunity, the much more dramatic human impact could be felt in the resulting incapacity of many diplomatic missions in Kuwait to fulfil their primary responsibility, that of protecting the interests of their own nationals."

42. Some ambassadors stated that diplomatic and consular missions that did not comply with the order to close were subject to deliberate acts of harassment, including the suspension of water and electricity as well as telephone communications. Diplomats who stayed on in Kuwait after the 24 August deadline were interned in their premises, which were themselves, on occasion, transgressed. The mission was told of forcible entry into specific diplomatic residences. Privileges and immunities of diplomatic personnel at the highest level were violated.

Concluding remarks

43. The mission was able during its short stay to gather important information required as a basis for its future work. However, a great deal still needs to be recorded and certain aspects will require to be further clarified in order to complete the picture. In particular, the mission will need to obtain more information on the laws that were enforced during the period of occupation and to examine the compatibility of those laws, as well as of actual Iraqi practices, with the provisions of the Fourth Geneva Convention. On the basis of information received so far, there would not appear to have been any law that regulated the conduct of the occupation of Kuwait.

Notes

a/ General Assembly resolution 217 A (III).

b/ General Assembly resolution 2200 A (XXI), annex.

c/ United Nations, Treaty Series, vol. 75, No. 973.

UNITED NATIONS NATIONS UNIES

18 March 1991

PRESS RELEASE

The U.N. Special Mission to Kuwait Will Receive Information on Iraqi Practices during the Occupation.

The U.N. Special Mission currently in Kuwait, as part of its mandate will receive pertinent information from Kuwaiti authorities, as well as from non-governmental sectors, on certain issues relating to human rights. This information will cover two aspects:

a. Loss of life incurred during the Iraqi occupation of Kuwait; and

b. Iraqi practices affecting the civilian population in Kuwait during the occupation.

Information furnished under the first heading will be considered within the framework of existing international human rights norms such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The term "loss of life" would also cover cases of enforced or involuntary disappearances, if such a distinction is made in the information submitted.

Information received under the second heading would be viewed within the context of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (the Fourth Geneva Convention).

Interested parties are advised that the information submitted should conform with the "best evidence" principle, i.e., it should come from sources closest to the occurrences alleged. Basic data, such as indication of places, dates and other corroborative elements would complement the information thus presented.

The Mission may be contacted at the SAS Hotel, Kuwait or at the office of the Red Crescent Society of Kuwait.